51 Am. Jur. 2d Licenses and Permits § 12

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Licenses and Permits
Jill Gustafson, J.D.

II. Power to Require License

B. Police Power

§ 12. Requirement of regulatory purpose; distinguishing between revenue and regulatory measures

Topic Summary | Correlation Table | References

> **West's Key Number Digest**
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> West's Key Number Digest, Licenses⚷3 to 5.1

A license fee that is, in fact, imposed purely or primarily as a revenue measure cannot be justified as an imposition under the police powers of a state.[1]

Where revenue is the principal objective of the tax, it is not sustainable as a license fee under the police power alone.[2] To determine whether an exaction authorized by a statute or ordinance constitutes an "occupation tax" or "license fee," the test is whether the primary purpose of the exaction, when the statute or ordinance is considered as a whole, is for regulation or for raising revenue. If the primary purpose is for regulation, then the exaction is a "license fee," but if the primary purpose is to raise revenue, it is an "occupation tax," regardless of the name by which it is designated.[3] Nevertheless, it seems reasonable to conclude that a revenue measure is intended in the enactment of a licensing ordinance whose title indicates it to be for general revenue purposes, and whose contents include no provisions for supervision, control, or regulation of the licensed activities.[4] Thus, the imposition of a business license tax under a general taxing ordinance is presumed to be for revenue alone, unless the contrary is made clearly to appear.[5]

In ascertaining whether license legislation is a regulatory or a revenue measure, the court may properly consider the amount of a license imposition.[6]

Footnotes

[1]   City and County of San Francisco v. Boss, 83 Cal. App. 2d 445, 189 P.2d 32 (1st Dist. 1948); Tamiami Trail Tours, Inc. v. City of Orlando, 120 So. 2d 170 (Fla. 1960); Publix-Lucas Theaters v. City of Brunswick, 206 Ga. 206, 56 S.E.2d 254 (1949); City of Chicago v. R. & X. Restaurant, 369 Ill. 65, 15 N.E.2d 725, 117 A.L.R. 1313 (1938); Greenwood v. City of Washington, 230 Ind. 375, 102 N.E.2d 642 (1952); State v. Osborne, 171 Iowa 678, 154 N.W. 294 (1915); City of Georgetown v. Morrison, 362 S.W.2d 289 (Ky. 1962); Maryland Theatrical Corp. v. Brennan, 180

Md. 377, 24 A.2d 911 (1942); People v. Rawley, 231 Mich. 374, 204 N.W. 137, 39 A.L.R. 1381 (1925); Moots v. City of Trenton, 358 Mo. 273, 214 S.W.2d 31 (1948); State v. Police Court of City of Bozeman, 68 Mont. 435, 219 P. 810 (1923); Village of Dodge v. Guidinger, 87 Neb. 349, 127 N.W. 122 (1910); Terry v. City of Portland, 204 Or. 478, 269 P.2d 544 (1954); Rock v. City of Philadelphia, 328 Pa. 382, 196 A. 59, 114 A.L.R. 567 (1938); State v. Anderson, 144 Tenn. 564, 234 S.W. 768, 19 A.L.R. 180 (1920); City of Charlottesville v. Marks' Shows, 179 Va. 321, 18 S.E.2d 890 (1942); Wisconsin Telephone Co. v. City of Milwaukee, 126 Wis. 1, 104 N.W. 1009 (1905).

[2]   BTD-1996 NPC 1 L.L.C. v. 350 Warren L.P., 170 N.J. 90, 784 A.2d 1214 (2001).

[3]   City of Houston v. Harris County Outdoor Advertising Ass'n, 879 S.W.2d 322 (Tex. App. Houston 14th Dist. 1994), writ denied, (Feb. 16, 1995).

[4]   V-1 Oil Co. v. Utah State Dept. of Public Safety, 131 F.3d 1415 (10th Cir. 1997) (applying Utah law); Mom N Pops, Inc. v. City of Charlotte, 979 F. Supp. 372 (W.D. N.C. 1997), decision aff'd, 162 F.3d 1155 (4th Cir. 1998) (applying North Carolina law).

[5]   Renfro Valley Folks, Inc. v. City of Mt. Vernon, 872 S.W.2d 472 (Ky. Ct. App. 1993).

[6]   City of Portage v. Harrington, 598 N.E.2d 634 (Ind. Ct. App. 1992); Haller Baking Co. v. Borough of Rochester, 118 Pa. Super. 501, 180 A. 108 (1935).
As to the amount of imposition, see §§ 38 to 41.

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